IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7465 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SURESHKUMAR J SONEJI

Versus

DEESA MUNICIPALITY

Appearance:

1. Special Civil Application No. 7465 of 1990

MR KS JHAVERI for Petitioner No. 1

MR MEHUL H RATHOD for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

RULE SERVED BY DS for Respondent No. 3

MR YN OZA for Respondent No. 4

MR MUKESH R SHAH for Respondent No. 5

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 04/04/2003

ORAL JUDGEMENT

This petition is filed by the petitioner challenging the order passed by the Collector on 25th July 1990 and the order of the Chief Officer on 10th

September 1990. The petitioner has prayed for quashing and setting aside of the said orders and sought for the direction to promote him to the post of Rent Officer with effect from 1st June 1990 with all consequential benefits.

2. The case of the petitioner is that the petitioner was originally appointed as Clerk in the year 1982 in Municipality, the respondent No.1 herein. The petitioner was promoted as Rent Officer by an order dated 1st June 1990 as the petitioner was the only qualified person in the Municipality. The said order was challenged by the President of the Deesa Karmachari Mandal in Appeal No. 7/1990 preferred before the Collector, Banaskantha. The petitioner was not a party to the said proceedings nor the petitioner was heard and the Collector by his order dated 25th July 1990 observed that since the Chief Officer of Deesa Municipality has cancelled the order dated 1st July 1990, the question of cancelling the order did not arise and the Municipality was restrained from implementing the order dated 1st June 1990. It is further stated in the petition that pursuant to the said order of the Collector dated 25th July 1990, the Chief Officer has also passed an order on 10th September 1990 staying the order dated 1st June 1990 whereby the petitioner was promoted as Rent Officer. It is further stated by the petitioner that the petitioner was not only qualified for the post of Rent Officer and Accountant in the Accounts Branch, the petitioner was also qualified for the Office Superintendent, Internal Auditor and Senior Account Clerk. However, since he was promoted on the post of Rent Officer he had not challenged the other posts at the relevant time and since the petitioner was wrongly reverted by an order dated 10th September 1990, the petitioner has also challenged the appointments of respondents No. 4 and 5. The petitioner has further stated that as per the settlement between the Union and the Municipality, the required qualification was graduation in Commerce or Government Diploma of Accounts or SSC with six years experience in the Accounts Branch. It was further submitted that even as per the award between the Union and the Municipality, the promotion should be given on the basis of efficiency and qualification and that was rightly given to the petitioner by virtue of an order dated 1st June 1990 and there was no need to revoke the said order. The petitioner has therefore submitted that neither the Collector nor the Municipality was justified in cancelling the order of promotion of Rent Officer passed in favour of the petitioner and reverting the petitioner to his original post.

3. On notice being issued by this Court, the respondents have filed their appearance through their respective ld. advocates. The respondent No.1 has filed an affidavit-in-reply opposing the grant of any relief to the petitioner. It was stated that the petition was not maintainable inasmuch as an alternative remedy by way of revision under Section 264 of the Gujarat Municipalities Act, 1963 was available to the petitioner. It was further stated that Deesa Karmachari Mandal preferred an appeal under Sec. 7 of the Act before the Collector, Banaskantha in which the impugned action dated 1.6.1990 promoting the petitioner to the post of Rent Officer was suspended and therefore the petitioner was reverted to his original-post and that the impugned order being one passed by the Deesa Municipality who was heard when the appeal was decided. It was further denied that the petitioner was the only person qualified for the post of Rent Officer. The respondent No.1 has also referred to the settlement under Section 2(p) of the Industrial Disputes Act, and as per demand No.13 of the said settlement it was settled between the parties that against the post, qualifications were prescribed but at the same time the seniority was also the important criteria and on the basis of seniority irrespective of academic qualification, promotion could be effected, provided the candidate was otherwise competent to the post. It was further stated that the Committee of the respondent No.1 has passed Resolution dated 23-1-90 wherein it was decided after due deliberation that the vacant post should be filled in, in general, according to the seniority and it was also decided that even if the candidate was not having the academic qualification, the promotion on the basis of seniority should be given. It was further stated that in anticipation of sanction of the post of Rent Officer the petitioner was appointed but the said post was not sanctioned nor any person in place of the petitioner was therefore appointed against the said post of Rent Officer, the petitioner could not make any grievance in this petition and he could not have made a claim by bypassing the seniority to the effect that he being the Commerce graduate he should be appointed as Accountant or other equivalent post.

4. The respondent No.4 has also filed his affidavit-in-reply and resisted the claim of the petitioner. The respondent No.4 was appointed as Accountant and his appointment was challenged by the petitioner. The respondent No.4 has referred to his seniority, performance, 2(p) settlement etc., and contended that his appointment as an Accountant was in

accordance with law and also as per the rules and regulations applicable to such appointment.

5. The petitioner has filed affidavit-in-rejoinder disputing the averment and submissions made in the affidavit-in-reply of respondent No.1 as well as the respondent No.4 and reiterated that the orders passed by the Chief Officer and the Collector are in violation of the principles of natural justice and that the said orders being illegal and invalid are required to be quashed and set aside.

6. In this matter, Mr. KS Zaveri is appearing for the petitioner. Learned Assistant Government Pleader, Ms. Manisha Lavkumar is appearing for the respondent No.2. Though the respondents No. 1 and 3 were served nobody appears on their behalf. Mr. YN Oza, learned Senior Counsel is appearing for respondent No.4, and Mr. Mukesh R. Shah, learned advocate appearing for respondent No.5. Ms. Manisha Lavkumar, learned AGP appearing for respondent No.2 has taken me through the affidavit-in-reply filed on behalf of respondents No. 1 and 4 and submitted that since the appointment of the petitioner as Rent Officer was not in accordance with the 2(p) settlement and also not in accordance with the rules and regulations, the same was rightly cancelled by the Collector and consequently the Chief Officer of respondent No.1 has also passed the order to that effect. As per 2(p) settlement, the seniority was the main criteria and the petitioner's appointment was made ignoring the seniority of other persons, the said appointment was rightly challenged by the Union and the appeal preferred by the Union was allowed by the Collector. The other challenge made by the petitioner in this petition with regard to appointment of Accountant, Internal Auditor or Office Superintendent could not be justified on the ground that the same was not challenged at an appropriate stage and the grievance was raised only when the petitioner was reverted from Rent Officer to the Rent Clerk. It is also an admitted position that the post of Rent Officer was not sanctioned and there being no sanctioned post, the petitioner was wrongly appointed to the said post. The mistake was subsequently rectified by the Collector as well as the Chief Officer of the respondent No.1 Municipality. The Municipality cannot be compelled to continue the petitioner as Rent Officer notwithstanding the fact that there was no sanctioned post.

7. Having regard to the facts and circumstances of the case, and after having gone through the pleadings of

the respective parties, I am of the view that there is no infirmity in the order passed by the Collector as well as the Chief Officer of the respondent No.1 Municipality and hence no case is made out for showing any indulgence in the said orders. Even otherwise, the exercise of power and jurisdiction, under Articles 226 and 227 of the Constitution of India, is discretionary and this Court does not think it proper to exercise the extraordinary jurisdiction looking to the factual profile of the present petition. The petition is, therefore, dismissed. Rule is discharged with no order as to costs.

rmr. [K.A. Puj, J.]